IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (STAMP) NO.21854 OF 2004

IN

CIVIL APPLICATION NO.343 OF 2003

IN

WRIT PETITION NO.4442 OF 1999

M/s.Hotel Pride Executive Pvt.Ltd. ...Applicant

Versus

M/s.Kelkar & Kelkar & Anr. ...Respondents

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Mr.Pankaj S.Shah for Applicant.

Mr.Nitin P.Deshpande for Respondent No.1.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 18, 2004.

P.C.

1. Heard Counsel appearing for the Applicant.

2. This Application seeks to recall the order passed by me on 29th July 2004. Indeed, neither the Applicant appeared before this Court on 29th

July 2004 nor the Advocate for the Applicant appeared when the matter was called out. The reason given by the Applicant is that appearance of the concerned Advocate was not shown. Even if there is substance in this grievance, the Advocate was called upon to address the Court on merits as to why the order which was passed on 29th July 2004 ought not to be sustained for the reasons already recorded in the order. In response to this, the Counsel has addressed the Court and the only argument which is canvassed before me is that the Writ Petition came to be admitted on 12th August 1999 and later on, when the matter was placed for consideration of interim relief on 2nd September 1999, the Advocate of the Respondent No.1 made statement before the Court that the Respondent No.1 shall not execute the award and that statement was continued by this Court on 14th July 2000. This submission clearly overlooks the fact that on 2nd September 1999, the prayer for interim relief was not decided on its own merits but the Respondent No.1 made statement before the Court that he shall not execute the Award. The matter was adjourned for two weeks, as is noted in the said order.

However, the matter appeared for the first time for consideration of interim relief on 14th July 2000 on which date, the Counsel for the Petitioner/Applicant herein did not appear, nor any one appeared for the Respondent No.1. In that backdrop, the Court proceeded to pass the following order.

> "None for the Petitioner.
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> The Respondent no.1 has already made a statement that Award shall not be executed. Unless the Respondent No.1 was to resile from the said stand, the said arrangement shall continue till the final disposal of the Writ Petition."

3. The Respondent No.1 thereafter filed Civil Application being Civil Application No.343 of 2003 asserting that the order which was passed by the Court below against the Writ Petitioner was in the nature of money decree and therefore, the Petitioner be put to terms by directing them to deposit the decretal amount in this Court and by giving liberty to the Respondent No.1 to withdraw

the same on furnishing security. That application came to be finally disposed of on 29th July 2004. According to the Applicant/Writ Petitioner, this application has been filed almost after two years from the order dated 14th July 2000. Even so, the fact remains that the Writ Petition has remained pending and during the pendency of the Writ Petition, the Respondent No.1 thought it appropriate to take recourse to recovery, may be because of uncertainty of time for disposal of the main proceedings on the assertion that the decree passed against the Petitioner was a money decree. In that sense, the Respondent No.1 decided to resile from the stand or the representation made to this Court on 2nd September 1999. Merely because the Civil Application No.343 of 2003 came to be filed after two years from 14th July 2000, cannot be the basis to deny the relief which was claimed by the Respondent No.1 in the said application and which was legitimate.

4. I have already recorded reasons why the Petitioner has been put to terms and interim order has been passed on condition. I see no reason to

recall that order as that is the appropriate order to be passed by any Appellate Court while entertaining appeal against money decree. Hence, this Application fails. The same is rejected.

5. The time granted in the order dated 29th July 2004 to deposit the amount is, however, extended by further period of two weeks from today.

6. At this stage, learned Counsel for the Applicant/Writ Petitioner prays that the operation of this order be stayed. I see no reason to entertain this request. That prayer is rejected.

A.M.KHANWILKAR, J.